

**OPINION
59-32**

April 16, 1959 (OPINION)

BANKS AND BANKING

RE: Powers of Banks - Interest on Loans; Rate

This is in reply to your request for an opinion on the following set of facts:

A bank establishes an open line of credit for a client of \$1,000, and the client issues a special check for \$100 in January , which check immediately becomes a note of \$100, upon payment of the bank, with a charge of 1 percent per month on this \$100, if not repaid within 7 months, the interest charge would exceed the allowable rate of 7 percent per annum.

You then ask whether or not a bank may operate under the program outlined above. There is no special law which covers the problem at hand.

The interest rate on the above program actually amounts to the rate of 12 percent per annum.

At first it appears as if this program would fit into the small loans act which was passed by House Bill 537. On further examination, however, it is found that this act contains the exemption that it shall not apply to any person doing business under and as permitted by any law of this state or the United States relating to banking associations, banking institutions, banks, etc. This exemption also provides that no such person shall be eligible to become a licensee under the act. It, therefore, follows that the bank could not operate under the small loans act.

The 1959 Legislature also passed House Bill No. 539 relating to revolving charge account, but the definitions and provisions of the act do not include banks, nor is the act applicable to banks. The plan as outlined and the arguments in favor of the plan as contained in a letter dated April 6 from Mr. Davidson enclosed in your letter to this office have some appealing features. However, the interest rate of 1 percent per month would exceed the allowable rate of 7 percent per annum. The interest chargeable by the bank is controlled by law, section 6-0362. The interest is not to exceed 7 percent per annum, section 47-1409 of the North Dakota Revised Code of 1943. Because of the interest rate we cannot sanction the program under the existing laws. The arguments in favor of the plan are well taken and most likely would be considered favorably by the Legislature. This office, however, is concerned only with the existing law.

It is therefore our opinion that the plan as outlined because of the interest feature is not within the existing laws and would be a contravention of state statutes.

LESLIE R. BURGUM

Attorney General